



2024 : DHC : 1421



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: 14.02.2024
Pronounced on: 21.02.2024

+ **CRL.M.C. 1705/2023 & CRL.M.A. 6511/2023**

TUSHAR SHARMA Petitioner

Through: Mr. Rohit Gaur, Advocate.

versus

GRAPHIC ADVERTISING Respondent

Through: Mr. Rakesh Malhotra, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of present petition filed under Section 482 Cr.P.C., the petitioner seeks to assail the order dated 02.03.2020 passed by the learned M.M, Tis Hazari Court, Delhi in Complaint Case No. 8504/2019 filed under Section 138 of the Negotiable Instruments Act ('NI Act'), whereby petitioner has been summoned to face trial.

2. As per the complaint, the respondent prepared and supplied graphic designs to one M/s Tara Enterprises/accused company (accused No.1 in the complaint). Against the supply of same, a balance of Rs.1,41,600/- remained as due. In discharge of the same, the accused company issued a cheque bearing No.679333 dated 13.08.2019 drawn on Punjab National Bank, Behdala (Una), H.P. It was further alleged that the said cheque was issued



on the directions and instructions of one Mr. Hoshiyar Singh (accused No.2 in the complaint) and the present petitioner (accused No.3 in the complaint). The said cheque, when presented for encashment, was returned dishonoured due to insufficient fund/NPA account. Resultantly, the respondent issued legal notice dated 17.09.2019 to the accused company as well as the other accused persons, seeking repayment within 15 days. Upon their failure to repay the same, the present complaint came to be filed. In the complaint, it has been stated that accused No.1 is an unregistered firm wherein accused Nos.2 and 3 are the authorized signatory/proprietor/partner/deemed and real owner/official of the said accused. Consequent to the pre-summoning evidence, summons were directed to be issued against all the 3 accused including the present petitioner.

3. Learned counsel for the petitioner has challenged the summoning order as regards the petitioner by arguing that the petitioner is neither the proprietor/partner nor the authorized signatory of the accused company. In this regard, he has drawn attention of the Court to the Certificate of Acknowledgement of the Registration of Firm [Form 'C' {Rule 9(a)}] issued by Deputy Registrar of Firm, Una, Himachal Pradesh, alongwith the GST Registration Certificate of the accused company. He argues that a combined reading of both the documents clearly show that the accused company is a partnership firm having two partners of equal shares: one Sh. Hoshiyar Singh and one Sh. Bhuvesh Chander Kalia. The said document nowhere shows the present petitioner as a partner in the said firm.

4. Learned counsel for the respondent, on the other hand, has contended that even though petitioner has not been named as a partner in the said partnership firm however, he is a deemed owner of the firm i.e., the



petitioner is holding the same in a benami capacity. In light of the same, he argues that even though the petitioner is not a partner, but considering his position as the deemed owner, the petitioner should be made liable for the offence under Section 138 NI Act, as it can be understood that the petitioner was in actual control of the affairs of the firm. The petitioner alongwith accused No.2 can be considered as an association of persons, and should be made liable under Section 138 NI Act. To buttress his argument, learned counsel for the respondent has argued that a recovery suit is maintainable against such an association of person and therefore, such an association can also be made liable under Section 138, with the assistance of Section 141 NI Act.

5. At this stage, it would be apposite to recapitulate the legal position involved in the present case. Prosecution under Section 138 NI Act requires the following conditions to be satisfied:-

“i) that the cheque is drawn by a person and on an account maintained by him with a banker for the payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability;

ii) the said cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account;

iii) the payee or holder in due course makes a demand for payment of the said amount by giving a notice in writing to the drawer within 30 days of the receipt of information from the bank regarding return of the cheque as unpaid;

iv) the drawer of such cheque fails to make the payment of the said amount to the payee or holder in due course, within 15 days of receipt of said notice.”



6. In the present matter, the factum of existence of debt or liability, the dishonour of the cheque, issuance of the statutory notice or the failure to repay the amount within 15 days has not been disputed. The petitioner is sought to be made liable based upon the fact that he is a deemed owner and that he would be vicariously liable under Section 141 NI Act. This position is sought to be countermanded by the petitioner on the ground that he is neither a partner nor the authorized signatory of the firm and thus, cannot be made liable under Section 141 NI Act.

7. Before advertng to the merits of the contentions raised by both the parties, it would be apposite to refer to Section 141 NI Act, since the entire matter hinges around it. The said section reads as under:-

“141. Offences by companies— (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent



or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section, — (a) “company” means any body corporate and includes a firm or other association of individuals; and (b) “director”, in relation to a firm, means a partner in the firm.”

8. Admittedly, in the complaint filed before the learned MM, the respondent stated that the present petitioner was a partner/proprietor/official/deemed/real owner of the accused firm, as is evident from the Memo of Parties as well as the averments made in the complaint. However, during the course of submissions, learned counsel for the respondent has conceded that the petitioner is neither the partner nor the authorized signatory of the firm, but that he seeks to make the petitioner liable based upon the fact that he is the deemed/real owner.

9. In my considered opinion, the said contention raised by the respondent merits rejection. Apart from the bald averment made in the complaint as well as during the course of submissions that the petitioner is the deemed owner of the firm, no other evidence has been produced/placed on record to show that the petitioner is the deemed/real owner or that he was in charge or responsible for the business of the firm at the time of the commission of the offence. On the other hand, the petitioner has placed on record a certificate of acknowledgement of registration from the Deputy Registrar of Firms. The said document nowhere shows the present petitioner as a partner in the said firm. Further, a perusal of the complaint would show



that the cheque was issued on account of the firm and was signed by Sh. Hoshiyar Singh and not the present petitioner.

10. In light of the facts discussed above, it can be seen that there is no evidence on record to show that the petitioner was a partner of the firm or that he was the signatory of the cheque. In the absence of any such evidence to bring the petitioner within the fold of Section 138 r/w Section 141 NI Act, forcing the petitioner to stand trial solely on the basis of a bald averment, that too unsubstantiated, would amount to an abuse of the process of law.

11. Reference in this regard can be made the observations of the Supreme Court in S.P. Mani & Mohan Dairy v. Snehlata Elangovan¹, wherein it was stated:-

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*50. The principles discernible from the aforesaid decision of this Court in Ashutosh Ashok Parasrampuriya are that the High Court should not interfere under Section 482 of the Code at the instance of an accused unless it comes across some unimpeachable and incontrovertible evidence to indicate that the Director/partner of a firm could not have been concerned with the issuance of cheques. This Court clarified that in a given case despite the presence of basic averment, the High Court may conclude that no case is made out against the particular Director/partner provided the Director/partner is able to adduce **some unimpeachable and incontrovertible evidence beyond suspicion and doubt.***

(emphasis supplied)

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57. When in view of the basic averment process is issued the complaint must proceed against the Directors or partners as the case may be. But if any Director or Partner wants the process to

¹ 2022 SCC OnLine SC 1238



be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he is really not concerned with the issuance of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his contention. He must make out a case that making him stand the trial would be an abuse of the process of Court. He cannot get the complaint quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint, it must be shown that no offence is made out at all against the Director or partner.

xxx”

12. Considering the entire factual matrix including the fact that the petitioner has presented an unimpeachable and incontrovertible material in the form of certificate of acknowledgement issued by the Deputy Registrar of Firms, which clearly shows that he is not a partner in the accused firm as well as the fact that the respondent has failed to produce any evidence to the contrary, the present petition is allowed. The summoning order as well as the complaint against the present petitioner are quashed. Pending application is disposed of as infructuous.

MANOJ KUMAR OHRI
(JUDGE)

FEBRUARY 21, 2024

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